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Outstond H. A. P. Carran, Minister of Interior, Hunsduin, April 19th, 1981 Hawaiian Gazette.

EST MODUS IN REBUS. WEDNESDAY, DECEMBER 14, 1881. Supreme Court of the Hawaiian Islands

October Term, 1881.

REPOLA VS. AHOLI. - MOTION FOR A NEW

July Term of this Cours, the jury rendering a verdict for the Defendant.

this relationship to the satisfaction of the jury, and she had her day in Court to do this.

The motion is now made for a new trial on the ground of newly discovered and court on the ground of newly discovered and court in the ground of newly discovered and capable of inheriting. The present plaintiffs were not parties to that action: if they had been they would have made common cause with the defendant on the issue made up.

It does not seem to us that this till.

the ground of newly discovered evidence, and the affidavit of Counsel discloses that after trial some persons who had heard of the circumstances of the case, declared that they knew the relationship of the plaintiff and could give testimony substantiating it.

It seems to me that when the plaintiff comes to the Court with her complaint she must be prepared to prove it and the failure to make diligent search in the locality, where the patentee's family lived, for sufficient testimony o establish the case is one that cannot easily The evidence offered is cumulative, I under-

stand the law to be that no new trial will be erely cumulative, and this rule will be relaxed only with great caution. The new evidence must differ in kind and relate to distinct and independent facts. That The b New tr' I refused.

Honolain, October 29, 1881. Supreme Court of the Hawaiian Islands

Special Term, November, 1881. HANA VS. MEHRKULA. - IN BANCO. Judd, C. J., McCally and Austin. J. J .- Opin-

ion of the Court by Judd, C. J. This is a libel of divorce on the ground of desertion which came on regularly to be heard by Mr. Justice McCully at the last April Term. Upon the proofs adduced the learned Justice declined to grant the diverce, whereupon the petitioner appealed to the Supreme Court in Banco. The question to be decided

s whether there is any appeal allowed by the law in divorce cases. The Act of 1870 (Chapter 16) is the main statute on Divorce. By its second section, if the parties last lived together on Oahu, juris-diction was conferred upon a tribunal to consist of not less than two Justices of the Su-preme Court sitting at term. As the law then tood no provision was made for an appeal on the law or the facts. This was unnecessary, as the decision of two Justices would be that of a majority of the Supreme Court, and this

is final by the authority of the 69th Article of The Legislature of 1878 (Chapter 26) repealed that part of Section 2 of the Act of 1870, in reference to jurisdiction and substi-tuted the following words: "Libels for Di-vorce shall be heard by a Justice of the Supreme Court, presiding at a regular term of the Supreme or Circuit Court." But the Act

made no provision for an appeal. It will be observed that although a single Justice of the Supreme Court is empowered to try such causes, it is the act of the Court at term and not in Chambers, and consequently the 850th Section of the Civil Code which authorizes an appeal to the Court in banco, from a decree, order or judgment of a Justice of the Spreme Court in Chambers, does not apply. Jurisdiction in divorce is purely a creation of the statute and where no provision is made by statute for an appeal, it must be held that

We are therefore obliged to hold that the indement of Mr. Justice McCully, who tried this case is final and conclusive as to its facts. H. HACKFELD & CO., The remaining question is whether any errors of law alleged to have been made by a Justice in a divorce case can be enquired into by the Supreme Court in Banco. We have above indicated that divorce juris.

diction is that of the Court held by one Justice, and Sections 834 to 837 inclusive, of the Civil Code, provide for exceptions on all ques-

tions of law so arising.

The appellate jurisdiction of the Supreme Court in Banco on all questions of law over all inferior tribunals should be maintained unless it is expressly prohibited by statute.

Such was the jurisdiction entertained by his Court in the case of the Minister of the Interior vs. Glover, 3 Haw. 697, where the statute expressly denied the right of appeal to We therefore hold that exceptions will lie from the decree of the Court sitting in divorce,

and under this head, an exception to the finding of the Court as being contrary to the evidence may be taken. In considering such an exception the rules which control courts when considering exceptions to verdicts of ries as contrary to the evidence will govern. If the appellant wishes to proceed with her exception at the next term of this Court she may do so. W. L. Holokahiki for Petitioner, J. L. Kau-

Honolulu, Nov. 26, 1881. Supreme Court of the Hawaiian Islands Special Term, November, 1881. KAHONU ET AL, VS. PAMAHOA-INBANCO,

Indd, C. J., McCully and Austin, J. J. Opinio of the Court by Judd, C. J.

This is a bill in Equity by Kukahiko, Kahonu Kamakamehsha, Kaupai, Kaneha, Ka-lepa and Maihui, against Pamahea, alleging that one Charles Kanaina died intestate in 1877, leaving no widow or issue; that on a HAP Carter, on for distribution the Court of probate decreed that his estate should be distributed in eight shares among various parties as his heirs, descendants of the brothers and sisters of his father and mother; that at the hearing the defendant Pamahoa claimed to be entitled to one distributive share as the great-grand daughter of one Kaneikolia the sister of Kanwa the mother of the decedent; that the produce Court (the late Chief Justice Harris) disallowed this claim, whereupon Pamahou ap-pealed to a jary which rendered a verdict find-ing that Kancikolia was daughter of Moana, and younger sister of Kauwa the mother of Charles Kanaina; the bill further alleges that the plaintiffs as well as the defendant, are being of the said Kaneikolia and sets forth their pedigree through Nakoolambhka a daughter of Kaneikelia, and claims that the share of the estate of C. Kanama for which judgment was given for the heirs of said Kaneikolia should e divided among the plaintiffs, in certain alleged shares which division the defendant has refused to make. The hill prays that the share of the estate of C. Kanaina, for which judgment was thus given upon the appeal of Pamuton, may be divided equally among the plaintiffs who are the children of Nakoolaniobaka and the representatives of her children deceased and the defendant Pamahoa: that Pamaina may be ordered to file an account of all moneys received by her from the estate of C. Kanaina; that the Administrator and Coms missioner, W. C. Parke and J. I. Dowsett (whit is alleged helds moneys of the said Pamae hos received on account of her share in thi-

The defendant demurred to the bill, alleging want of equity and that the verdict of the jury was conclusive in her favor. The late Chief Justice Harris on the 9th of June last, filed his opinion overruling the demurrer and ordering defendant to answer. An appeal was

estate) be ordered to file accounts and be en-

oined against paying the money over to Pama-

The defendant urges that the property in question has been decided by the proper Court to be in Pannahoa, and that this verdict is conclusive and excludes the claims of the plain Books, Leases, & &c.

Hams and Bacon.

Court on a matter within its jurisdiction and therefore binding and conclusive and which cannot be impropried or contradicted, so long as it remains in force and unreversed. tiffs, being an adjudication by a competen

This doctrine of law, protecting decrees and dgments of Courts, we think was well put lefendant's counsel, but it does not apply

in this case.

The verdict of the jury and the judgment in pursuance of it was that Kaneikolia was the sister of Kanaina's mother, and this proposi-tion the plaintiffs do not propose to invalidate or contradict, for their claim in this bill is founded upon it. This was the only question the jury was asked to pass upon, and a special issue was accordingly framed for them to find. Opinion of Mr. Justice Judd.

This is an action of Ejectment tried at the concern to the other claimants to this estate The Plaintiff claimed that she was the niece of the original Patentee of the land, Keliiku-hoe, Pakinikini, Plaintiff's mother being Kelii-kulos's sister.

> re-open any question that has been the subject of higation. It does not affect any of the heirs who have been decreed to inherit from C. Kanaina, except the one claiming through Several of these plaintiffs as well as the defendant presented their claims to the probate court and all sought to show that Kaneikolia

was the aunt of Kanaina, but no one succeeded in proving it to the satisfaction of that court. One of the parties, the defendant in this case, thereupon prosecuted the appeal and was suc-If each of these parties had appealed to a jury, there would have been allowed but one

ordered if the newly-discovered evidence is jury and one trial of this issue and the result would have been the same so far as the other claimants in the Kanaina estate were con-The bill avers that the plaintiffs are heirs of SCANTLING. offered in this case does not take it out of the Kaneikolia and that the defendant is likewise, and the demurrer concedes this for arguments sake: then, as the late Chief Justice well

A. FRANCIS JUDD, Justice Supreme Court.
Coastle & Hatch for plaintiff. J. L. Kauluon for defendant.

on for defendant.

the property which belongs to the heirs of Kaneikolia and the others obtain nothing, and as this is exactly what this bill seeks to remedy, the plaintiffs must have an opports nity of showing whether they are in fact heirs of Kaneikolia.

Denurrer overruled and defendant to answer n twenty days. Castle & Hatch for Plaintiffs; S. B. Dole and J. Russell for Defendant.

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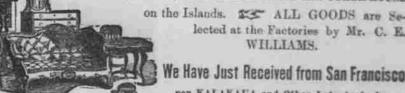
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